

CHANGEU.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 29

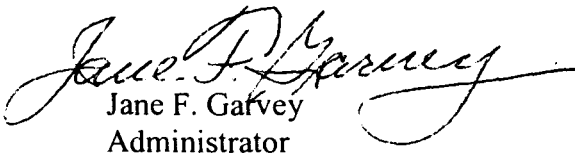
9/28/99

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change transmits revised pages to Chapter 2, Compliance and Enforcement Policy and Objectives.
2. EXPLANATION OF CHANGES. This change revises paragraphs 205a and 205b. This change:
 - a. Revises the criteria for determining when administrative action may be taken in lieu of legal enforcement action for an alleged statutory or regulatory violation.
 - b. Explains the effect of prior administrative actions on the determination of appropriate enforcement action for future noncompliance by an alleged violator.
 - c. Allows for greater flexibility in determining whether administrative action is appropriate for an alleged violation where an alleged violator has previous instances of noncompliance with the same part of the Federal Aviation Regulations or provision of Title 49, Subtitle VII.
3. DISPOSITION OF TRANSMITTAL. After filing the attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
21 and 22	4/20/94	21 and 22	9/28/99
		22-1	9/28/99
		22-2	4/24/94



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Administrator

Distribution: A-W-1; A-W(AT/PS/SM)-2; A-W(PP/AM/SF/GC/FS/IA/VS)-3; A-XYZ(AT/AF/CS)-2; Z-X(AS/AM/GC/FS)-3; A-Y(AM/AR/GC)-3; A-Z(AM/AN/GC)-3; A-FAC/FAC/FCS-0; A-FAF/FAT/FIA-0(LTD); ZFS-325 Initiated By: AGC-300

f. Informal communications with agency attorneys. Supervisors and managers of headquarters, regional, or field personnel involved in compliance and enforcement should encourage open dialogue and sharing of information and opinions between investigating program office personnel and regional and headquarters attorneys. Open and informal communication between the investigative and legal staffs will improve the effectiveness of and promote consistency in the enforcement program.

* 205. ADMINISTRATIVE ACTION.

a. Legal Effect. Administrative actions are not adjudications. Neither a letter of correction nor a warning notice constitutes a finding of violation and, therefore, the opportunity for a hearing is not required. Prior administrative actions are not considered violation history, and consequently, may not be used in this regard as an aggravating factor in determining the amount of sanction in a legal enforcement action. However, a prior administrative action(s) may appropriately be considered in determining the amount of sanction to the extent it reflects on the compliance attitude of an alleged violator who after being warned through an administrative action(s) that certain conduct violates the statute or regulation commits that same conduct in the face of such a warning. Prior administrative actions are considered in deciding on the type of enforcement action appropriate for the latest alleged violation.

b. General Requirements. Field personnel shall exercise sound judgment and reasonable discretion in issuing administrative actions to ensure that the policy objectives of the FAA and their respective lines of business within the FAA are being met. The decision to take administrative actions ordinarily does not need to be coordinated above the cognizant field office level.

(1) Where legal enforcement action is not required by law, and administrative action would serve as an adequate deterrent to future violations, a warning notice or letter of correction may be issued as provided in section 13.11 of the Federal Aviation Regulations. Administrative action shall not be taken solely as a matter of convenience, where evidence to support a violation is lacking, or in cases that are stale and for which administrative action would not be appropriate. (Cases are stale when the regulatory or statutory time limitation for initiating legal enforcement action has lapsed.)

(2) FAA personnel may take administrative action, in lieu of legal enforcement action, when the criteria in paragraph 205b(1) are satisfied, and the following elements are present:

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(a) The nature of the alleged violation does not indicate that a certificate holder lacks qualification to hold a certificate;

(b) The alleged violation was inadvertent, i.e., it was not the result of purposeful conduct by the alleged violator;

(c) The alleged violation was not a substantial disregard for safety or security and the circumstances of the violation were not aggravated. "Substantial disregard" means:

- 1 In the case of a certificate holder, that the act or failure to act was a substantial deviation from the degree of care, judgment, and responsibility normally expected of a person holding that certificate with that type, quality, and level of experience, knowledge, and proficiency.
- 2 In the case of a person who is not a certificate holder, the act or failure to act was a substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances.

(d) The alleged violator has a constructive attitude toward complying with the regulations (e.g., a person that allegedly commits a significant number of unrelated violations, particularly of the same part of the Federal Aviation Regulations (e.g., 14 CFR part 108, 14 CFR part 121) over a relatively short period of time would ordinarily be regarded as having a poor compliance disposition); and

(e) The alleged violation does not indicate a trend of noncompliance with, or a disregard for, a statutory provision or regulations in a particular part of the Federal Aviation Regulations because of a previous instance(s) of noncompliance with that statutory provision or that part of the Federal Aviation Regulations. (With regard to alleged violations of the antidrug and alcohol misuse prevention programs, reference to a "particular part" means those regulations in part 121 and 135 pertaining to such programs and appendices I and J of part 121.) This determination must be based reasonably upon the circumstances in each case, taking into

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consideration a variety of factors, including whether the alleged violator is an individual or entity, and the size and scope of the alleged violator's operations.

- 1 With regard to an individual or a small company (e.g., a local repair station with two or three employees) that has one previous alleged violation of a particular part of the Federal Aviation Regulations, a subsequent alleged violation of that part might not indicate a disregard for the regulations or trend of noncompliance if the alleged violations occurred for different reasons. In this case, administrative action may be appropriate for the subsequent alleged violation, provided all other criteria are met. On the other hand, if the alleged violations resulted from the same conduct by an individual or by the same part of a small entity's organization, then the subsequent alleged violation might suggest a disregard for the regulations and the beginning of a trend of noncompliance. In this case, administrative action would not be appropriate.
- 2 With regard to entities conducting larger operations (e.g., air carriers, category X or 1,2,3 airports), a single, previous alleged violation by one part of the entity's organization would not likely preclude administrative action for a subsequent alleged violation committed by another part of the organization. In a large organization, two isolated alleged violations of the same part of the Federal Aviation Regulations by different divisions within that organization would not necessarily indicate a trend of noncompliance with, or indicate a disregard for the regulations in, a particular part of the Federal Aviation Regulations by the entity's management. Administrative action, however, would not be appropriate where a review of the alleged violator's compliance background reveals a pattern of several, similar alleged violations of the same part of the Federal Aviation Regulations throughout the entity's organization that have gone undeterred by the use of administrative or legal enforcement action.

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c. Evidence of constructive attitude. In making a judgment concerning whether a violator has a constructive attitude, documentation showing the violator's completion of any of the following and recency of the attendance may also be considered:

- (1) The FAA Accident Prevention Program as volunteer counselor or program assistant;
- (2) The Pilot Proficiency Award Program (WINGS);
- (3) The Pilot and Aircraft Courtesy Evaluation (PACE) Program;
- (4) FAA-sponsored Accident Prevention program safety seminars on the subject(s) implicated in the alleged violation;
- (5) FAA-sponsored, industry-conducted safety seminars on the subject(s) implicated in the alleged violation;